Filed 3/22/16 In re A.U. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.U., et al., Persons Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. M.U., Defendant and Appellant.	E064151 (Super.Ct.No. RIJ1200932) OPINION

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson, Judge. Affirmed.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant and Appellant.

Gregory P. Priamos, County Counsel and Julie Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

Appellant M.U. (father) is the father of four children, M.U., A.U., V.U. and J.U., (children) who were ages 8, 4, 3 and 1 on the date of the challenged order. Father argues the juvenile court committed reversible error on July 30, 2015 by terminating parental rights to the minors in the absence of proper notice under the Indian Child Welfare Act, 25 U.S. Code § 1901 et seq. (ICWA). For the reasons discussed below, we affirm.

PROCEDURAL BACKGROUND[1]

On September 6, 2012, the Department of Public Social Services (Department) filed a petition under Welfare and Institutions Code section 300[2] regarding the three older children, alleging the family home was unsafe and unsanitary, the parents engaged in domestic violence in the children's presence, and that both parents abused alcohol and demonstrated a limited ability to provide care for the children. Father and the children's mother both denied having Native American ancestry, and each parent signed a form ICWA-020 Parental Notification of Indian Status in which they indicated they had no Native American ancestry as far as they knew.

The dependency progressed through detention, jurisdiction, and disposition, at which points the juvenile court found, first on September 4 and then on November 6, 2012, that ICWA did not apply. The court granted reunification services to the parents.

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[1] The customary recitation of the facts and procedure in this case is abbreviated as unnecessary to resolve the narrow issue on appeal.

[2] All section references are to the Welfare and Institutions Code unless otherwise indicated.

At the six-month review hearing held on May 7, 2013, the juvenile court continued reunification services and found that ICWA did not apply.

At the 12-month review hearing held on January 8, 2014, the juvenile court terminated reunification services to both parents and set a section 366.26 hearing.

On May 8, 2014, the section 366.26 hearing was continued for 120 days to allow the Department to obtain an adoptive home for the children. The court found that "None of [the children] are Native American."

On July 22, 2014, the Department filed a section 300 petition regarding the newborn infant J.U., who was born exposed to methamphetamine and hospitalized in the Neonatal Intensive Care Unit. J.U. had the same mother and father as her three older siblings. According to the detention report for J.U., on July 19, 2014, mother and father again denied having Native American ancestry.

At the detention hearing for J.U. on July 23, 2014, through his counsel, father gave the very first indication that he claimed Native American ancestry: "I did submit an ICWA-20. Father's indicating American Indian ancestry. However, he is unsure of the tribe. I did list that it would be on the paternal grandfather's side, and I did list the name of Mario [U.], Sr., that is the paternal grandfather." The juvenile court found that ICWA may apply, ordered J.U. detained, and set the jurisdiction and disposition hearing out 30 days to allow for ICWA noticing.

The Department sent the ICWA notice to the Bureau of Indian Affairs (BIA), which responded that "The notice received contains insufficient or limited information to

determine Tribal Affiliation . . . . When additional information becomes available, please forward the Notice to the appropriate Tribe(s)."

On August 25, 2014, the juvenile court found that the Department had complied with the ICWA notice requirements for J.U.

On October 29, 2014, the juvenile court found the ICWA did not apply to J.U. The court also declared J.U. a dependent child, denied the parents reunification services under section 361.5, subdivision (b)(10), and set a section 366.26 hearing.

After several continuances, the juvenile court held a section 366.26 hearing for all four children on July 30, 2015. The court found that the children were likely to be adopted[3] and terminated parental rights.

This appeal by father followed.

DISCUSSION

Father argues the Department failed to give adequate notice under the ICWA because the notice "did not include all available family history information." Specifically, father asserts the following available information was omitted from the ICWA notice despite being available from the paternal grandmother, Susan L., if only the Department had asked: Susan L.'s birth date, birthplace, address, maiden name, tribal affiliations, and her parents' names. Further, father asserts that Susan L. "almost certainly possessed similar information" for the paternal grandfather. As discussed below, we find no prejudicial error. This is because: (1) it appears from the record that

[3] The four children were placed together in a single adoptive home in June 2015.

the children's Native American heritage derives from their paternal grandfather, not from Susan L., and so any error in not providing the information to BIA regarding Susan L. was harmless; and (2) we could find no information in the record, and father cites to none, to support his claim that Susan L. had similar information (birth date, tribal affiliation, etc.) about the paternal grandfather and that this information was available to the Department.

The ICWA was enacted "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families . . . ." (25 U.S.C.A. § 1902.) "The ICWA presumes it is in the best interests of the child to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations . . . ." (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.) To this end, section 1911 of the U.S.C.A. allows a tribe to intervene in state court dependency proceedings. (25 U.S.C.A. § 1911(c).)

Notice of the proceedings is required to be sent whenever it is known or there is reason to know that an Indian child is involved. (25 U.S.C.A. § 1912(a); Welf. & Inst. Code, § 224.2, subd. (a); see *In re Desiree F., supra*, 83 Cal.App.4th at p. 469.) Notice serves a twofold purpose: "(1) it enables the tribe to investigate and determine whether the minor is an Indian child; and (2) it advises the tribe of the pending proceedings and its right to intervene or assume tribal jurisdiction." (*Desiree F.*, at p. 470.)

In addition to the child's name and date and place of birth, if known, the notice is required to include the "name of the Indian tribe in which the child is a member or may be eligible for membership, if known." (§ 224.2, subd. (a)(5)(B).) The notice is also

required to contain "[a]ll names known of the Indian child's biological parents, grandparents, and great-grandparents, . . . as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known." (§ 224.2, subd. (a)(5)(C); see also 25 C.F.R. § 23.11.)

Juvenile courts and child protective agencies have "'an affirmative and continuing duty'" to inquire whether a dependent child is or may be an Indian child. (*In re H.B.* (2008) 161 Cal.App.4th 115, 121; § 224.3; Cal. Rules of Court, rule 5.481.) As soon as practicable, the social worker is required to interview the child's parents, extended family members, the Indian custodian, if any, and any other person who can reasonably be expected to have information concerning the child's membership status or eligibility. (§ 224.3, subd. (c); *In re Shane G.* (2008) 166 Cal.App.4th 1532, 1539; Cal. Rules of Court, rule 5.481(a)(4).) "Notice is meaningless if no information or insufficient information is presented to the tribe." (*In re S.M.* (2004) 118 Cal.App.4th 1108, 1116, fn. omitted.) "The juvenile court must determine whether proper notice was given under ICWA and whether ICWA applies to the proceedings. [Citation.] We review the trial court's findings for substantial evidence. [Citation.]" (*In re E.W.* (2009) 170 Cal.App.4th 396, 403-404.)

Here, on the belated form ICWA-020 filed by father on July 23, 2014, the box is checked indicating "I may have Indian ancestry," and handwritten on the same line is "unknown PGF – Mario [U.] Sr." The spaces for writing the name of the tribe and band are left blank. Mother filed the same form on that date indicating she had "no Indian ancestry as far as I know." This is substantial evidence that any Native American

ancestry for the child would be through the paternal grandfather rather than through the paternal grandmother Susan L.

On August 21, 2014, the Department filed with the juvenile court a form ICWA-030 "Notice of Child Custody Proceeding for Indian Child" that was dated August 4, 2014. The notice was sent to father, the mother, and the BIA.

In the section of the ICWA-030 for including information on the Child's Paternal Grandfather, the only information are the names "Mario [U.] Sr." and "Sergio Mario [U.] (AKA)." There is no other information provided, including in the designated spaces for "Tribe or band, and location," birth date and place, or current or former address. Although father asserts that this information as available from his mother, Susan L., with whom the Department was in contact, the Department is correct here that this is mere speculation. According to the record, father told the social worker in 2012 that he was raised by his mother, Susan L., and "does not know his father." There is nothing in the record at all to indicate that Susan L. possessed any information regarding the paternal grandfather's Native American ancestry, or any of the information relevant to the ICWA-30.

Father also argues the ICWA-030 notice was deficient regarding Susan L.'s information because it only included her name and omitted other information that could easily have been obtained from Susan L., including the names of her parents, her current and former addresses, birth date and place, and tribal affiliation. "Both the federal regulation and section 224.2, subdivision (a), require the social services agency to provide as much information as is known concerning the child's direct lineal

ancestors . . . including maiden, married former names or aliases . . . . [Citation.].)" (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 575, fn. 3.) However, we agree with the Department that any error was harmless because the record indicates any Native American heritage was through the paternal grandfather, not Susan L. Under *In re Cheyanne F., supra,* 164 Cal.App.4th 571, 576-577, omission of information about non-Indian relatives is not necessarily prejudicial, unless such information about the non-Indian relatives is relevant to a tribe's determination regarding the child's eligibility. We see no indication here that such information is relevant to determining the children's eligibility for tribal membership, and so find the omission to be harmless. Father has failed to establish prejudicial error.

DISPOSITION

The juvenile court's orders are affirmed.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

MILLER
J.